

Ex-BART boss sentenced in bribe scandal

By Michael Collier
The Tribune

SAN FRANCISCO — Former BART maintenance manager Helder Simas was sentenced yesterday to two years in prison and fined \$42,000 for accepting a bribe and using public funds to outfit his home workshop.

Simas, 47, of Concord, was one of four rapid transit district managers charged by federal authorities with misusing more than \$200,000 in public funds.

He was convicted in April of accepting a \$2,000 bribe from an undercover FBI agent posing as a maintenance contractor. Simas also was found guilty of using BART funds to buy \$2,000 worth of equipment, including a lawn mower, truck roof rack and shop tools, from another agent who posed as a supplier.

U.S. District Court Judge Thelton Henderson said he agreed with jurors that Simas, a longtime BART employee, was unconvincing in his claims of innocence.

"I didn't believe Mr. Simas," the judge said. "I thought he had some rather incredible explanations for how this happened."

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Defense lawyer Walter Cannady said jurors used Simas as a scapegoat for their general dismay at the BART system. Simas was allowed to remain free on bail pending his appeal.

A three-year FBI sting operation resulted in the arrests last year of Simas and BART maintenance managers Arnold Flores

and Hilario Gomez. Flores pleaded guilty to accepting \$16,000 in bribes and was sentenced to five years in prison. Gomez has been declared incompetent to stand trial.

Michael Sharpe, former head of BART's real estate department, plans to plead guilty to charges he embezzled \$150,000 from the agency.

Furor erupts

over director

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By Benny Evangelista
Tribune staff writer

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A BART director's letter to a judge — backing a lighter sentence for a former BART employee convicted of misusing district funds — drew fire yesterday from fellow board members.

BART board President Erlene DeMarcus, who said she learned of the letter from "furious" FBI agents, yesterday sent her own letter clarifying that BART Director Michael Bernick was speaking for himself and not the rest of the board.

"It was improper," DeMarcus said. "It was very irresponsible. I just think he made a mistake."

Bernick, an attorney who represents San Francisco on the BART board, defended his Nov. 11 letter to U.S. District Court Judge Thelton E. Henderson about former BART maintenance manager Helder Simas.

Simas was one of three former BART employees caught in a three-year FBI sting operation.

A federal jury in 1989 convicted Simas of accepting a \$2,000 bribe from an undercover FBI agent and using BART funds to buy \$2,000 worth of goods from another undercover agent.

Henderson sentenced Simas to two years in prison and fined him \$42,000. Appeals that have since failed stayed imposition of the sentence.

Simas' attorney Ephraim Margolin asked Henderson to reduce the sentence to allow him to serve the term in a half-way house, which would allow him to continue working for a new employer who promised to fully pay the fines and restitution to BART.

Simas is due before Henderson Dec. 2.

Bernick said Margolin, whom he has known since law school, asked him to write the letter.

"In my view there has not been sufficient attention paid by the FBI to the unreimbursed losses suffered by BART as a result of law enforcement activities, which came very close to entrapment and consequently resulted in losses to BART which might have been avoided," Bernick wrote.

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The new sentence was "an eminently sensible outcome," wrote Bernick, who also noted he is the board's vice president.

In an interview, Bernick said the letter "makes it very, very clear that it is my view."

"Since it is a non-violent crime, it made sense to have him continue in his job," Bernick said. Simas would still serve a sentence and "the taxpayers can get paid back," Bernick said.

DeMarcus, however, said she was "shocked" to learn of the letter Tuesday when "furious" FBI agents called her asking if the

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letter represented the board's view.

Bernick violated the board's "clear policies" by using BART's letterhead instead of his own stationery, DeMarcus said.

Director John Glenn made the letter public during a board discussion on the flow of information between directors. The revelation then reopened the ongoing heated feud between Glenn and Director Nello Bianco, with Bernick charging it was all tied to a board power play.

However, Assistant U.S. Attorney Ben Burch later said he also questioned whether the letter represented the entire board.

FBI spokeswoman Barbara Madden said she did not want to characterize her agency's reaction.

"We certainly hoping the board didn't feel that way," Madden said. "He's entitled to his opinion and he's entitled to write a letter."

However, "Mr. Simas wasn't entrapped. Obviously, the jury didn't feel that way," Madden said. And she said the investigation did not cause BART financial losses.

Tribune writer Michael Collier contributed to this report.